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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	90002396
Applicant	Flexa Network Inc.
Applied for mark	FLEXA CAPACITY
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Appealed class	Class 036. First Use: 0 First Use In Commerce: 0 All goods and services in the class are appealed, namely: Providing electronic processing of collateralized cryptocurrency payments via asecure global computer network; collateralized cryptocurrency exchange services
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Serial No.: 90/002396

Mark: FLEXA CAPACITY

Filing Date: June 15, 2020

Applicant: Flexa Network, Inc.

Examining Attorney: Jacqueline Jones
Law Office 120

EX PARTE APPEAL

APPLICANT'S APPEAL BRIEF

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Applicant, Flexa Network Inc., has appealed to the Trademark Trial and Appeal Board (TTAB) from the final decision of the United States Patent and Trademark Office Examining Attorney refusing registration of the mark FLEXA CAPACITY, Serial No. 90/002396, in standard characters, applied for in connection with the following goods and services:

- *Downloadable computer software for managing, validating, and collateralizing cryptocurrency transactions using blockchain-based smart contracts*, in International Class 9;
- *Providing electronic processing of collateralized cryptocurrency payments via a secure global computer network; collateralized cryptocurrency exchange services*, in International Class 36;
- *Providing temporary use of non-downloadable web-based decentralized applications (dApps) for cryptocurrency trading and cryptocurrency collateralization; Providing user authentication services using blockchain-based software technology for collateralized cryptocurrency transactions*, in International Class 42.

INTRODUCTION

The Examining Attorney has refused registration of the mark, FLEXA CAPACITY, stating that it creates a likelihood of confusion with U.S. Registration No. 4,805,599 for the mark CAPACITY, owned by Recipco Holdings, Ltd. Applicant respectfully disagrees. The only common element of the marks, the word CAPACITY, is weak and therefore afforded a narrow scope of protection, and the dominant portion of Applicant's mark, FLEXA, is distinctive and distinguishes the two marks.

Further, the Examining Attorney has fundamentally misunderstood the services offered by Applicant, and premises her likelihood of confusion refusal on this misunderstanding. Applicant provides a merchant payments network that enables merchants to receive secure U.S. dollar payments via their existing points-of-sale from a consumer who needs or wants to pay with a cryptocurrency or other digital asset. To accomplish this, Applicant facilitates the exchange of the consumer's digital assets to fiat currency and remits the fiat currency to the

merchant for payment of goods. While the exchange and remittance services are being performed, Applicant collateralizes the transaction to ensure there is no risk of loss to the merchant.¹ These services are entirely different and distinct from those in the Cited Registration. The Examining Attorney's analysis of the services is based upon a misunderstanding of the substantive difference between Applicant's aforementioned cryptocurrency payment services and the exchange services in the Cited Registration for the execution, clearing and settlement of trade and financial transactions for swap, derivative, futures, options, securities and other financial transactions. Thus, to sustain the Examining Attorney's refusal would preclude any other person or entity from registering a mark incorporating the descriptive word CAPACITY for any and all innovations in the financial services field.

Accordingly, Applicant respectfully requests that the Board reverse the Examining Attorney's refusal, or, in the alternative, remand the matter to the Examining Attorney with instruction to amend the recited services to more precisely reflect the distinct services that Applicant provides.

DESCRIPTION OF RECORD

A. Prosecution History

The application for registration of the mark, FLEXA CAPACITY, was initially refused on September 17, 2020 in a Non-Final Office Action on the grounds of a perceived likelihood of confusion with U.S. Registration No. 4,805,599 for the mark CAPACITY, owned by Recipco Holdings, Ltd. in connection with the following services:

Exchange services in the nature of execution, clearing, reconciling and settlement of trade and financial transactions via a global network involving credit derivatives, energy derivatives, foreign exchange derivatives, credit default swaps, structured financial products, bonds,

¹ Flexa Network Whitepaper, May 2019 <https://flexa.network/whitepaper.pdf>

commodities, commodity derivatives, futures, options, securities, shares, stocks, and/or related financial instruments; debt settlement services for trade and financial transactions involving credit derivatives, energy derivatives and/or foreign exchange derivatives; financial evaluation, tracking, analysis and forecasting services in real-time relating to securities and other financial instruments; providing a database in the field of financial analysis for generating reports on information and statistics relating to the execution, clearing and settlement of trade and financial transactions; clearing and reconciling financial transactions and debt settlement; providing financial information in the field of trade transaction execution data, namely, transaction prices, inter-commodity spread pricing, and best-bid/best-offer price discovery; providing financial information relating to financial transactions, including commodity data, providing financial market data, market views, financial data, product volume, weight, and pricing, settlement details, order quantities, delivery dates, transaction life-cycle status, contract symbols, and/or transaction summaries; credit-risk management services; providing any or all of the aforesaid services on-line via a website that is accessible by users via a computer terminal and/or a mobile communication device; credit card payment processing services; electronic payment, namely, electronic processing and transmission of bill payment data, in International Class 36.

Applicant filed a Response to the Office Action on March 17, 2021. On April 2, 2021, the Examining Attorney issued a Final Office Action maintaining the perceived likelihood of confusion as to the services in International Class 36 only. On October 4, 2021, Applicant filed a Request to Divide Application, a Request for Reconsideration, and a timely Notice of Appeal. The Request to Divide Application was accepted and processed on November 2, 2021, and Serial No. 90/975930 for FLEXA CAPACITY in Classes 9 and 42 was recently published for opposition on December 7, 2021. However, and in connection with the application for FLEXA CAPACITY in Class 36, on November 9, 2021, the Examining Attorney denied the Request for Reconsideration after Final Action. On November 10, 2021, the TTAB issued a notice to Applicant indicating that the appeal was resumed.

B. Examining Attorney's Evidence

September 17, 2020 Non-Final Office Action

The Examining Attorney submitted Internet evidence comprising screenshots from Kraken.com, CoinsPaid.com, and CoinGate.com to show that the same entity provides similar services. September 17, 2020, *Office Action, TSDR, p. 5-54*.

April 2, 2021 Final Office Action

In the Final Office Action, the Examining Attorney submitted Internet evidence comprising printouts of an online dictionary definition of the word, CAPACITY, from <https://www.ahdictionary.com/word/search.html?q=capacity>, to demonstrate that the marks of both parties allegedly carry the same meaning as the word, CAPACITY. She also submitted printouts from the USPTO's X-Search database on April 2, 2021 to show that the services of both parties come from the same source. April 2, 2021, *Final Office Action, TSDR, p. 3-27*. On October 4, 2021 Applicant filed a Request to Divide Application. It was accepted and processed on November 2, 2021.

November 9, 2021 Request for Reconsideration Denied

In the decision denying the Request for Reconsideration, the Examining Attorney attached additional Internet evidence from Kraken.com, Coinbase.com, Gemini.com, b2broker.com, Nuvei.com, B2BinPay.com, Opennode.com, Coinqvest.com to reiterate the position that the services of the parties are allegedly similar. November 9, 2021, *Reconsideration Denied Letter, TSDR, p. 2-20*.

C. Applicant's Evidence

March 17, 2021 Response to Office Action

Applicant submitted Internet evidence from Forbes.com, Fool.com, Cnet.com, and Finance.Yahoo.com to show that Applicant's services are in fact highly specialized and distinct from those in the Cited Registration. March 17, 2021, *Response to Office Action*, TSDR, p. 5-21.

October 4, 2021 Request for Reconsideration after Final Action

Applicant submitted Internet evidence from Ahdictionary.com, Investopedia.com, Nerdwallet.com, Forbes.com, Capacitytrade.com, Medium.com, Fool.com, Cnet.com, and Finance.Yahoo.com to further support the contention that Applicant's services are marketed to different consumers and travel in entirely different trade channels than those in the Cited Registration. October 4, 2021, *Request for Reconsideration After Final Action*, TSDR, p. 9-37. In addition, Applicant submitted U.S. Registrations for the marks owned by Applicant, FLEXA (U.S. Reg. No. 6,025,150) and FLEXACOIN (U.S. Reg. No. 5,922,714).

ARGUMENT

A. Likelihood of Confusion – Legal Standard

In *In re E. I. du Pont de Nemours & Co.*, the U.S. Court of Customs and Patent Appeals discussed the factors relevant to a determination of likelihood of confusion and cautioned that, with respect to determining likelihood of confusion, “[t]here is no litmus rule which can provide a ready guide to all cases.” 177 USPQ 563, 567 (C.C.P.A. 1973). In a given case, not all of the factors are relevant. Only those relevant factors for which there is evidence in the record must be considered. *Id.* at 567-68; *see also In re Mighty Leaf Tea*, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010).

There are two prongs to the likelihood of confusion analysis. First, consideration is given to the similarity or dissimilarity of the marks in their entireties, as to appearance, sound,

connotation and commercial impression. Second, consideration is given to the relatedness of the goods or services as described in the application and registration. In this two-pronged analysis, there is no mechanical test for determining likelihood of confusion and “each case must be decided on its own facts.” *du Pont*, 177 USPQ at 567.

Regarding prong one—the similarity or dissimilarity of the marks—“[i]f the common element of two marks is ‘weak’ in that it is generic, descriptive, or highly suggestive of the named goods or services, it is unlikely that consumers will be confused unless the overall combinations have other commonality.” TMEP §1207.01(b)(viii); *see* TMEP §§1207.01(b)(iii), (b)(ix). It follows that “consumers are more likely to perceive a fanciful or arbitrary term, rather than a descriptive or generic term, as the source-indicating feature of the mark.” TMEP § 1207(b)(viii) (citing *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, (Fed. Cir. 1997) (affirming TTAB’s finding that “DELTA,” not the disclaimed generic term “CAFE,” to be the dominant portion of the mark THE DELTA CAFE)). *See also, Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1338-40 (Fed. Cir. 2015) (remanded for consideration of whether and to what degree the phrase PEACE & LOVE was suggestive or descriptive in the food-service industry; opposition subsequently withdrawn); *In re Bed & Breakfast Registry*, 791 F.2d 157, 159, 229 USPQ 818, (Fed. Cir. 1986) (reversing TTAB’s holding that contemporaneous use of BED & BREAKFAST REGISTRY for making lodging reservations for others in private homes, and BED & BREAKFAST INTERNATIONAL for room booking agency services, is likely to cause confusion, because, *inter alia*, the descriptive nature of the shared wording weighed against a finding that the marks are confusingly similar); *In re FabFitFun, Inc.*, 127 USPQ2d 1670, 1675 (TTAB 2018) (holding I’M SMOKING HOT for cosmetics and related non-medical personal care items and SMOKIN’ HOT SHOW TIME for cosmetics not likely to cause confusion based

on a totality of the evidence showing that the shared wording is somewhat weak in view of its suggestiveness and that the marks overall convey different commercial impressions); *U.S. Shoe Corp. v. Chapman*, 229 USPQ 74 (TTAB 1985) (holding COBBLER’S OUTLET for shoes, and CALIFORNIA COBBLERS (in typed and stylized forms) for footwear and women’s shoes, not likely to cause confusion); *In re Istituto Sieroterapico E Vaccinogeno, Toscano “SCLAVO” S.p.A.*, 226 USPQ 1035 (TTAB 1985) (holding ASO QUANTUM (stylized, with “ASO” disclaimed) for diagnostic laboratory reagents, and QUANTUM I for laboratory instruments for analyzing body fluids, not likely to cause confusion).

Further, when considering the marks in their entireties, consumers are generally more inclined to focus on the first word, prefix or syllable in any trademark or service mark. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F. 3d 1369, 1372 (Fed. Cir. 2005); *see also Mattel Inc. v. Funline Merch. Co.*, 81 USPQ2d 1372, 1374-75 (TTAB 2006); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (“it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered” when making purchasing decisions).

B. Analysis

The Examining Attorney has concluded that the mark CAPACITY in the Cited Registration so resembles Applicant’s mark, FLEXA CAPACITY, that a Section 2(d) rejection is required. However, taking into account the totality of the evidence, Applicant posits that that there is no likelihood of confusion between FLEXA CAPACITY and the Cited Registration.

1. The marks are sufficiently dissimilar to avoid any likelihood of confusion.

In the Office Action of September 17, 2020, the Final Office Action of April 2, 2021, and the Office Action of November 9, 2021 denying the Request for Reconsideration, the Examining Attorney contends that Applicant's Mark, FLEXA CAPACITY, and the mark in the Cited Registration, CAPACITY, are confusingly similar in appearance, sound, meaning and overall commercial impression based on the common term, CAPACITY in both marks. In doing so, the Examining Attorney ignores the significance of the distinctive term, FLEXA, appearing as the first word of Applicant's Mark, which violates one of the fundamental and well-settled rules in comparing marks for a likelihood of confusion-- that marks must be considered in their entireties and not dissected into component parts. Moreover, the Examining Attorney further ignores the well held legal tenet that consumers are generally more inclined to focus on the first word in any trademark or service mark. *Palm Bay Imps., Inc.*, 396 F. 3d at 1372; *Mattel Inc.*, 81 USPQ2d at 1374-75; *Presto Prods., Inc.*, 9 USPQ2d at 1897.

a. The mark in the Cited Registration, CAPACITY, is weak and entitled to a narrow scope of protection.

“[I]f the common element of two marks is ‘weak’ in that it is generic, descriptive, or highly suggestive of the named goods or services, it is unlikely that consumers will be confused unless the overall combinations have other commonality.” TMEP §1207.01(b)(viii); *see also Juice Generation, Inc.*, 794 F.3d at 1338- 40 (Fed. Cir. 2015). Here, the common element of the marks – CAPACITY – is weak because it is descriptive of the Registrant's services. Registrant even conceded as much during the prosecution of the Cited Registration. To wit, in response to the Final Section 2(e)(1) Refusal issued by the Trademark Office on May 1, 2013 in connection with the Cited Registration, the Registrant represented that it “is proposing to create a new asset class from excess and available *capacity*” and that “the exchange that is being built is a novel economic architecture in [sic] that it facilitates non-monetary trade, which may be in the form of

excess or available *capacity* of a member entity.”² Therefore as the Applicant’s mark and the Cited Registration have no other commonality but for the descriptive term CAPACITY,³ it is highly unlikely that consumers will be confused. *Cf. In re Champlain Cable Corporation*, 21 TTABVUE 7-12 (finding leading and distinctive term, EXTRAD, in Applicant’s mark EXTRAD ERGOFLEX, was not enough to overcome a likelihood of confusion with the Registered Mark, ERGOFLEX plus Design, where the distinctive term ERGOFLEX was the common term).

b. The dominant portion of Applicant’s Mark is FLEXA, a distinctive word that distinguishes Applicant’s Mark from the Cited Registration.

The Examining Attorney argues that “[t]he marks are similar because the registered mark is entirely incorporated within the applied-for mark.”⁴ The Examining Attorney’s focus is misplaced. The focus should be on the primary, leading, and distinctive portion of Applicant’s Mark, “FLEXA,” which is Applicant’s house mark.⁵ As the first part of Applicant’s Mark, the FLEXA house mark is presumptively the portion “which is most likely to be impressed upon the mind of a purchaser and remembered,” *Presto Prods. Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988), “particularly given its . . . use for the sort of [services] identified in the application.” *See In Re Simoniz USA, Inc.* 25 TTABVUE at 15 (TTAB 2020). (“the similarities between the marks [PLATINUM CERAMIC SHIELD and SIMONIZ CERAMICSHIELD] engendered by the common presence of the terms [“ceramic shield”] are outweighed by the dissimilarities driven by the dominant lead elements PLATINUM and SIMONIZ. . . . We find that a consumer with a general recollection of the cited standard character

² May 1, 2013 Final Office Action, TSDR 8 (emphasis added).

³ The mark in the Cited Registration is registered on the Supplemental Register, further indicative of its descriptiveness.

⁴ September 17, 2020 Non-Final Office Action TSDR, 4.

⁵ U.S. Registration No. 6,025,150 for FLEXA, registered on March 31, 2020 and U.S. Registration No. 5,922,714 for FLEXACOIN, registered on November 26, 2019.

mark PLATINUM CERAMIC SHIELD who subsequently encounters Applicant's mark SIMONIZ CERAMICSHIELD is not likely to believe that Applicant's goods originate with, or are authorized or sponsored by, the owner of the cited mark.”)

The term FLEXA has “source-identifying significance in its lead-off position in the mark because it modifies the weaker term,” CAPACITY. *Id. at 20*. Generally, the first part of a mark is most likely imprinted on the minds of a purchaser, and therefore remembered. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005).

Moreover, “[a]dditions or deletions to marks may be sufficient to avoid a likelihood of confusion if: (1) the marks in their entireties convey significantly different commercial impressions; or (2) the matter common to the marks is not likely to be perceived by purchasers as distinguishing source because it is merely descriptive or diluted.” TMEP §1207.01(b)(iii); *see also Citigroup Inc. v. Capital City Bank Group, Inc.*, 637 F.3d 1344, 1356, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011) (affirming TTAB's holding that contemporaneous use of applicant's CAPITAL CITY BANK marks for banking and financial services, and opposer's CITIBANK marks for banking and financial services, is not likely cause confusion, based, in part, on findings that the phrase “City Bank” is frequently used in the banking industry and that “CAPITAL” is the dominant element of applicant's marks, which gives the marks a geographic connotation as well as a look and sound distinct from opposer's marks). Here, the mark in the Cited Registration, CAPACITY, has a descriptive meaning giving it a general commercial impression, and one that is not likely to be perceived by purchasers as distinguishing a specific source, for the reasons stated herein.

This is unlike Applicant's coined mark, FLEXA CAPACITY, which is distinctive, has no definite meaning, and serves as a source identifier by incorporating Applicant's house mark FLEXA.

The Examining Attorney even acknowledges that that "[t]he term 'FLEXA' has no meaning." But she uses that understanding to confoundingly conclude—without any supporting authority—that therefore "the marks as a whole each convey [sic] a similar overall general commercial impression of 'CAPACITY.'" This conclusion cuts against TTAB precedent and the common understanding that the first portion of the mark when it is viewed, heard, and remembered and 'may make the greatest impression on the ordinary buyer' regarding the source of the respective services. *Id.* (quoting 4 J. Thomas McCarthy, *McCARTHY ON TRADEMARKS AND UNFAIR COMPETITION* §23:42, at 23-245 (5th ed, 2018)). This is all the more puzzling where, and as further discussed below, the CAPACITY mark relates to exchange services for the execution, clearing and settlement of trade and financial transactions for swap, derivative, futures, options, securities and other financial instruments, whereas the services offered in connection with FLEXA CAPACITY are for cryptocurrency payment services.

Ultimately, the lead and distinctive term in the Applicant's Mark, FLEXA, "[is] the dominant portion and . . . likely to make the greatest impression on consumers," *Detroit Athletic Co.*, 128 USPQ2d 1047, 1049, making the marks, FLEXA CAPACITY and CAPACITY entirely dissimilar in appearance, sound, connotation, and commercial impression. This, coupled with the weakness and descriptiveness of the term CAPACITY should, respectfully, compel the Board to find that the similarity of the marks created by the term CAPACITY is outweighed by the dissimilarity of the marks due to the dominant lead element, FLEXA, in the Applicant's Mark.

The cases that the Examining Attorney relies on in her Office Action do not counsel otherwise and are readily distinguishable. For example, the Examining Attorney relies on *In re Shell Oil Co.*, 992 F.2d 1204, 1209 (Fed. Cir. 1993), where the court affirmed the Board’s decision to sustain the USPTO’s likelihood of confusion refusal where the word aspect of the applied-for mark and the cited mark were *identical* (“RIGHT-A-WAY”)-- that is simply not the case here. The same is true for *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-04 (TTAB 2009) where the Board affirmed the Examining Attorney’s likelihood of confusion refusal for identical marks (DAVEY). And in *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009), the Board upheld the refusal to register VANTAGE TITANS as likely to be confused with TITANS. But both VANTAGE and TITAN are descriptive words, in stark contrast to FLEXA that is far more distinctive.

2. The services of the parties are different, travel in different channels of trade, and are marketed to different consumers.

The services of the parties are delineated in the table below.

Applicant’s Services – International Class 36	Registrant’s Services – International Class 36
<ul style="list-style-type: none"> • Providing electronic processing of collateralized cryptocurrency payments via a secure global computer network • [C]ollateralized cryptocurrency exchange services 	<ul style="list-style-type: none"> • Exchange services in the nature of execution, clearing, reconciling and settlement of trade and financial transactions via a global network involving credit derivatives, energy derivatives, foreign exchange derivatives, credit default swaps, structured financial products, bonds, commodities, commodity derivatives, futures, options, securities, shares, stocks, and/or related financial instruments • [D]ebt settlement services for trade and financial transactions involving credit derivatives, energy derivatives and/or foreign exchange derivatives

	<ul style="list-style-type: none"> • [F]inancial evaluation, tracking, analysis and forecasting services in real-time relating to securities and other financial instruments • [P]roviding a database in the field of financial analysis for generating reports on information and statistics relating to the execution, clearing and settlement of trade and financial transactions • [C]learing and reconciling financial transactions and debt settlement • [P]roviding financial information in the field of trade transaction execution data, namely, transaction prices, inter-commodity spread pricing, and best-bid/best-offer price discovery • [P]roviding financial information relating to financial transactions, including commodity data, providing financial market data, market views, financial data, product volume, weight, and pricing, settlement details, order quantities, delivery dates, transaction life-cycle status, contract symbols, and/or transaction summaries • [C]redit-risk management services • [P]roviding any or all of the aforesaid services on-line via a website that is accessible by users via a computer terminal and/or a mobile communication device • [C]redit card payment processing services • [E]lectronic payment, namely, electronic processing and transmission of bill payment data
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While the services of both parties relate to financial services in general, that is where their similarity ends. Applicant's electronic processing and exchange services provide a merchant payments network that enables merchants to receive secure U.S. dollar payments via their existing points-of-sale from a consumer who needs or wants to pay with a cryptocurrency or other digital asset. To accomplish this, Applicant facilitates the exchange of the consumer's

digital assets to fiat currency and remits the fiat currency to the merchant for payment of goods. FLEXA CAPACITY “require[es] each transaction to be fully collateralized,”⁶ while the consumer’s digital assets are exchanged for fiat currency and remitted to the merchant for payment of goods. This distinguishes FLEXA CAPACITY from CAPACITY. Applicant’s services offer “the first network specifically designed to facilitate practical cryptocurrency payments by enabling instant, no-fee transactions.”⁷ In contrast, the services in the Cited Registration are not for cryptocurrency or payments transactions, but instead are for derivatives, commodities, futures, and options financial services transactions. “Derivatives are financial contracts, set between two or more parties, that derive their value from an underlying asset, group of assets, or benchmark.”⁸ Indeed, according to Forbes.com, the “setups” of “traditional exchanges and cryptocurrency exchanges . . . are vastly different”.⁹ Contrary to what the Examining Attorney posits, the services of both parties are narrowly defined and do not encompass the other. The Examining Attorney’s argument that the Registrant’s use of broad wording to describe its services unlawfully grants the Registrant a wildly overbroad scope of protection. And it fails to allow for the emergence of new and different financial services transactions such as those offered by the Applicant. Applicant therefore requests that the Board consider these important differences between Applicant’s and Registrant’s services to further determine that there will be no likelihood of confusion between the two marks.

3. As alternative relief, the Applicant seeks a remand to the Examining Attorney with instruction to amend the recitation of services to obviate any perceived likelihood of confusion.

⁶ AMP Whitepaper, November 2020 <https://amptoken.org/whitepaper.pdf>

⁷ Flexa Network Whitepaper, May 2019 <https://flexa.network/whitepaper.pdf>

⁸<https://www.investopedia.com/terms/d/derivative.asp#:~:text=Derivatives%20are%20financial%20contracts%2C%20set,or%20over%2Dthe%2Dcounter.&text=Common%20derivatives%20include%20futures%20contracts%2C%20forwards%2C%20options%2C%20and%20swaps>

⁹ <https://www.forbes.com/sites/leslieankney/2019/01/04/whats-so-different-about-cryptocurrency-exchanges/?sh=647bec1827e3>

Applicant contends that there is no likelihood of confusion and that the application for FLEXA CAPACITY, as applied for, should be approved for publication. However, in the alternative, Applicant offers the following amendment to the recitation of services:

Providing electronic processing of collateralized cryptocurrency payments via a secure global computer network; **collateralized** cryptocurrency exchange services **in the nature of enabling the immediate settlement of payment transactions.**

Applicant therefore respectfully requests that should the Board conclude that an amended recitation of services would obviate any likelihood of confusion, that the Board remand the application to the Examining Attorney with instruction to enter the foregoing recitation of services.

CONCLUSION

Applicant respectfully submits that its present application for FLEXA CAPACITY is not likely to cause confusion with the mark in the Cited Registration. The marks are sufficiently dissimilar with respect to appearance, sound, connotation, and commercial impression, and the narrowly-defined services of the parties are not related.

Accordingly, Applicant respectfully requests that the Board grant this Ex Parte Appeal and allow for registration of the present FLEXA CAPACITY mark.

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Respectfully submitted,

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